

EXHIBIT A

EXHIBIT 1

FILED UNDER SEAL

Subject: Re: RE: NYT v. Microsoft, et al. - No 1:23-cv-11195-SHS - Confidentiality Designations

Date: Tuesday, August 20, 2024 at 7:28:06 PM Pacific Daylight Time

From: Ellie Dupler

To: Scheibel, Elizabeth M.C., NYT-AI-SG-Service@simplelists.susmangodfrey.com, Emily Cronin

CC: openaicopyrightlitigation.lwteam@lw.com, OpenAICopyright@mofo.com, kvpoi@keker.com, NewYorkTimes_Microsoft_OHS@orrick.com, #Microsoft.NYClassAction.FDBR

Counsel,

Microsoft's response does not solve the issue. We remain unable to share improperly designated documents with certain members of our client. And Microsoft's statement that it will continue to evaluate whether it can redesignate certain categories of documents does not change that reality, particularly given that we first raised this issue on July 3 and Microsoft has not yet made any such proposal. Given the case schedule, The Times is not in a position to wait any longer.

We further disagree that it would be appropriate for The Times to propose categories of documents that should be redesignated. It is Microsoft's burden to apply appropriate confidentiality designations in the first instance, and Microsoft's proposal would require The Times's lawyers to disclose privileged work product by revealing to Microsoft categories of documents that we seek to share with our client.

We remain at an impasse on this issue and will be filing a motion to compel.

Thank you,

Ellie Dupler
Associate |
1900 Ave. of the Stars, Ste. 1400
Los Angeles, CA 90067
310-789-3107 (o) | 231-649-4283 (c)
edupler@susmangodfrey.com

From: Scheibel, Elizabeth M.C. <elizabeth.scheibel@faegredrinker.com>

Date: Friday, July 26, 2024 at 9:54 AM

To: Ellie Dupler <EDupler@susmangodfrey.com>, NYT-AI-SG-Service@simplelists.susmangodfrey.com <NYT-AI-SG-Service@simplelists.susmangodfrey.com>, Emily Cronin <ECronin@susmangodfrey.com>

Cc: openaicopyrightlitigation.lwteam@lw.com <openaicopyrightlitigation.lwteam@lw.com>, OpenAICopyright@mofo.com <OpenAICopyright@mofo.com>, kvpoi@keker.com <kvpoi@keker.com>, NewYorkTimes_Microsoft_OHS@orrick.com <NewYorkTimes_Microsoft_OHS@orrick.com>, #Microsoft.NYClassAction.FDBR <MicrosoftNYClassActionFDBR@faegredrinker.com>

Subject: RE: NYT v. Microsoft, et al. - No 1:23-cv-11195-SHS - Confidentiality Designations

EXTERNAL Email

Ellie-

Thank you for discussing this issue with us at the meet and confer. For the reasons stated in our 7/12 email and at the meet and confer, we designated documents appropriately and in good faith, and disagree that

Microsoft's designations are broadly inappropriate. In addition to the reasons already discussed, this case involves competitors as parties: Microsoft and OpenAI are business partners in certain respects, to be sure, but they are also competitors, and accordingly it is especially important to Microsoft that its highly confidential information be protected in this litigation.

During the meet and confer, we also discussed how re-reviewing the 25,000 documents Microsoft has produced to date would be a significant burden and would impede the progress of the case by diverting Microsoft's resources to a re-review instead of collection and production of new documents. During our discussion you were not able to identify any categories of documents The Times believes are broadly incorrectly designated, nor identify any categories of documents where the designations are inhibiting The Times' ability to litigate this case. We therefore understand The Times' position to be that nothing short of a full re-review is acceptable.

We will continue to designate documents in good faith, consistent with the protective order. In addition, Microsoft is evaluating whether there are categories of documents that could potentially be redesignated and can be identified and re-reviewed without undue burden. If The Times has any proposals to facilitate this evaluation, we remain open to hearing them. Microsoft will update The Times on whether additional documents will be re-designated as a result of this evaluation on or before July 31.

In the meantime, we have addressed each of the specific documents The Times has identified. We of course remain willing to meet and confer regarding any other particular documents or categories of documents that you identify. Beyond that, unless there are specific documents The Times identifies, we do not believe that there is anything further that requires resolution under the Protective Order at this time.

Thank you,
Liz

Elizabeth M.C. Scheibel

Associate

Pronouns: she/her/hers

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Faegre Drinker Biddle & Reath LLP

2200 Wells Fargo Center, 90 South Seventh Street
Minneapolis, Minnesota 55402, USA

From: Ellie Dupler <EDupler@susmangodfrey.com>

Sent: Thursday, July 18, 2024 12:29 PM

To: Scheibel, Elizabeth M.C. <elizabeth.scheibel@faegredrinker.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com; Emily Cronin <ECronin@susmangodfrey.com>

Cc: openaicopyrightlitigation.lwteam@lw.com; OpenAICopyright@mofo.com; kvpoi@keker.com; NewYorkTimes_Microsoft_OHS@orrick.com; #Microsoft.NYClassAction.FDBR <MicrosoftNYClassActionFDBR@faegredrinker.com>

Subject: Re: NYT v. Microsoft, et al. - No 1:23-cv-11195-SHS - Confidentiality Designations

This Message originated outside your organization.

Counsel,

Following yesterday's meet and confer, we understand that Microsoft remains unwilling to revisit the confidentiality designations applied to the documents it has produced to date. We maintain that

Microsoft's designation of nearly all of its documents as HC/AEO (approximately 98%) is inappropriate, particularly after we were able to provide you with multiple examples of documents with overly restrictive designations. Unless Microsoft offers to revisit its confidentiality designations, we remain at an impasse on this issue.

Thank you,

Ellie Dupler
Associate |
1900 Ave. of the Stars, Ste. 1400
Los Angeles, CA 90067
310-789-3107 (o) | 231-649-4283 (c)
edupler@susmangodfrey.com

From: Scheibel, Elizabeth M.C. <elizabeth.scheibel@faegredrinker.com>
Date: Monday, July 15, 2024 at 2:08 PM
To: Ellie Dupler <EDupler@susmangodfrey.com>, NYT-AI-SG-Service@simplelists.susmangodfrey.com <NYT-AI-SG-Service@simplelists.susmangodfrey.com>, Emily Cronin <ECronin@susmangodfrey.com>
Cc: openaicopyrightlitigation.lwteam@lw.com <openaicopyrightlitigation.lwteam@lw.com>, OpenAICopyright@mofo.com <OpenAICopyright@mofo.com>, kvpoi@keker.com <kvpoi@keker.com>, NewYorkTimes_Microsoft_OHS@orrick.com <NewYorkTimes_Microsoft_OHS@orrick.com>, #Microsoft.NYClassAction.FDBR <MicrosoftNYClassActionFDBR@faegredrinker.com>
Subject: RE: NYT v. Microsoft, et al. - No 1:23-cv-11195-SHS - Confidentiality Designations

EXTERNAL Email

Thanks, Ellie, that works for us. I'll send a meeting invitation for covering these two issues shortly.
Liz

From: Ellie Dupler <EDupler@susmangodfrey.com>
Sent: Monday, July 15, 2024 12:56 PM
To: Scheibel, Elizabeth M.C. <elizabeth.scheibel@faegredrinker.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com; Emily Cronin <ECronin@susmangodfrey.com>
Cc: openaicopyrightlitigation.lwteam@lw.com; OpenAICopyright@mofo.com; kvpoi@keker.com; NewYorkTimes_Microsoft_OHS@orrick.com; #Microsoft.NYClassAction.FDBR <MicrosoftNYClassActionFDBR@faegredrinker.com>
Subject: Re: NYT v. Microsoft, et al. - No 1:23-cv-11195-SHS - Confidentiality Designations

This Message originated outside your organization.

Liz,

Emily cannot make 10am CT on Wednesday, but we could both do 11am CT if that still works for you.

Thanks,
Ellie

From: Scheibel, Elizabeth M.C. <elizabeth.scheibel@faegredrinker.com>
Sent: Monday, July 15, 2024 9:46 AM
To: Ellie Dupler <EDupler@susmangodfrey.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com <NYT-AI-SG-Service@simplelists.susmangodfrey.com>; Emily Cronin <ECronin@susmangodfrey.com>
Cc: openaicopyrightlitigation.lwteam@lw.com <openaicopyrightlitigation.lwteam@lw.com>; OpenAICopyright@mofo.com <OpenAICopyright@mofo.com>; kvpoi@keker.com <kvpoi@keker.com>; NewYorkTimes_Microsoft_OHS@orrick.com <NewYorkTimes_Microsoft_OHS@orrick.com>; #Microsoft.NYClassAction.FDBR <MicrosoftNYClassActionFDBR@faegredrinker.com>
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EXTERNAL Email

Ellie-

Would it be possible to meet at 10am CT on Wednesday? Schedules have shifted a bit and a half hour earlier is better if we can make that work.

Additionally, we received a request last Wednesday from your colleague Emily Cronin to meet and confer regarding Microsoft's Interrogatory No. 7. We can be prepared to address that issue at the same call on Wednesday. Please let us know if you would like to proceed that way.

Thank you,
Liz

From: Ellie Dupler <EDupler@susmangodfrey.com>
Sent: Saturday, July 13, 2024 8:37 AM
To: Scheibel, Elizabeth M.C. <elizabeth.scheibel@faegredrinker.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com
Cc: openaicopyrightlitigation.lwteam@lw.com; OpenAICopyright@mofo.com; kvpoi@keker.com; NewYorkTimes_Microsoft_OHS@orrick.com; #Microsoft.NYClassAction.FDBR <MicrosoftNYClassActionFDBR@faegredrinker.com>
Subject: Re: NYT v. Microsoft, et al. - No 1:23-cv-11195-SHS - Confidentiality Designations

This Message originated outside your organization.

Liz,

We are available to meet and confer at 10:30am CT on Wednesday.

Thank you,
Ellie

From: Scheibel, Elizabeth M.C. <elizabeth.scheibel@faegredrinker.com>
Sent: Friday, July 12, 2024 4:43 PM
To: Ellie Dupler <EDupler@susmangodfrey.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com <NYT-AI-SG-Service@simplelists.susmangodfrey.com>
Cc: openaicopyrightlitigation.lwteam@lw.com <openaicopyrightlitigation.lwteam@lw.com>; OpenAICopyright@mofo.com <OpenAICopyright@mofo.com>; kvpoi@keker.com <kvpoi@keker.com>; NewYorkTimes_Microsoft_OHS@orrick.com <NewYorkTimes_Microsoft_OHS@orrick.com>; #Microsoft.NYClassAction.FDBR <MicrosoftNYClassActionFDBR@faegredrinker.com>
Subject: RE: RE: NYT v. Microsoft, et al. - No 1:23-cv-11195-SHS - Confidentiality Designations

EXTERNAL Email

Ellie-

Thanks for your email. We disagree that all the documents you identified are incorrectly designated as “Highly Confidential – Attorneys’ Eyes Only” or that Microsoft is widely over-designating documents in this case. Microsoft’s productions are largely from its internal systems and emails between employees – including several very high-level employees on matters that involve competitively sensitive, highly confidential business information – and so require the highest level of protection. This is to be expected in a high-stakes business litigation like this case. We acknowledge that a document may sometimes receive a designation that is more restrictive than it should, but Microsoft is taking care to designate its productions carefully, and we believe that in the vast majority of instances, the designations are appropriate.

Moreover, the protective order in this case allows a number of designated individuals access to AEO documents; in addition to outside counsel (and counsel’s employees), experts and designated inhouse counsel may access AEO material where reasonably necessary for the litigation. For this reason, we do not see the necessity of your re-designation requests, especially at this early stage of litigation. For example, it is unclear why a meeting invitation or a list of sessions at a Microsoft Build event is the sort of document that would be necessary to show to someone who is not already entitled to see it with an AEO designation.

Nevertheless, and in the interest of resolving this issue, Microsoft agrees to re-designate MSFT_TNYTC_000004787, MSFT_TNYTC_000004828, and MSFT_TNYTC_000086212, and MSFT_TNYTC_000086211 as Confidential. As to the others you raised, we maintain that their current designations are appropriate. Please let us know if you’d like to meet and confer next week regarding the most efficient path forward, and we can discuss these issues further. We can be available Tuesday and 10am-12pm CT on Wednesday.

Thank you,
Liz

From: Ellie Dupler <EDupler@susmangodfrey.com>
Sent: Friday, July 12, 2024 2:30 PM
To: Scheibel, Elizabeth M.C. <elizabeth.scheibel@faegredrinker.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com
Cc: openaicopyrightlitigation.lwteam@lw.com; OpenAICopyright@mofo.com; kvpoi@keker.com; NewYorkTimes_Microsoft_OHS@orrick.com; #Microsoft.NYClassAction.FDBR <MicrosoftNYClassActionFDBR@faegredrinker.com>
Subject: Re: RE: NYT v. Microsoft, et al. - No 1:23-cv-11195-SHS - Confidentiality Designations

This Message originated outside your organization.

Hi Liz,

Can you please provide us with an update on the status of your investigation into this issue?

Thanks,
Ellie

From: NYT-AI-SG-Service@simplelists.susmangodfrey.com <NYT-AI-SG-Service@simplelists.susmangodfrey.com> on behalf of Scheibel, Elizabeth M.C. <elizabeth.scheibel@faegredrinker.com>
Date: Wednesday, July 10, 2024 at 3:45 PM
To: Ellie Dupler <EDupler@susmangodfrey.com>, NYT-AI-SG-Service@simplelists.susmangodfrey.com <NYT-AI-SG-Service@simplelists.susmangodfrey.com>
Cc: openaicopyrightlitigation.lwteam@lw.com <openaicopyrightlitigation.lwteam@lw.com>, OpenAICopyright@mofo.com <OpenAICopyright@mofo.com>, kvpoi@keker.com <kvpoi@keker.com>, NewYorkTimes_Microsoft_OHS@orrick.com <NewYorkTimes_Microsoft_OHS@orrick.com>, #Microsoft.NYClassAction.FDBR <MicrosoftNYClassActionFDBR@faegredrinker.com>
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EXTERNAL Email

Ellie-

Thank you for your email. We are assessing the issues you raised and your requests, and as part of our ongoing meet and confer, we will provide you with a more substantive response tomorrow.

Thank you,
Liz

Elizabeth M.C. Scheibel

Associate

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From: Ellie Dupler <EDupler@susmangodfrey.com>
Sent: Wednesday, July 3, 2024 8:01 PM
To: openaicopyrightlitigation.lwteam@lw.com; OpenAICopyright@mofo.com; NewYorkTimes_Microsoft_OHS@orrick.com; kvpoi@keker.com; #Microsoft.NYClassAction.FDBR <MicrosoftNYClassActionFDBR@faegredrinker.com>
Cc: NYT-AI-SG-Service@simplelists.susmangodfrey.com
Subject: NYT v. Microsoft, et al. - No 1:23-cv-11195-SHS - Confidentiality Designations

This Message originated outside your organization.

Counsel,

It has come to our attention that Microsoft has designated documents as “Highly Confidential – Attorneys’ Eyes Only” to which that designation does not apply. For example:

1. MSFT_TNYTC_000004729: [REDACTED]

2. MSFT_TNYTC_000004787: [REDACTED]

3. MSFT_TNYTC_000004820: [REDACTED]

4. MSFT_TNYTC_000004828: [REDACTED]

5. MSFT_TNYTC_000086212: [REDACTED]

This does not appear to be an isolated issue. Microsoft has designated over 98% of its documents as “Highly Confidential – Attorneys’ Eyes Only.” Given the examples cited above, we have serious concerns that Microsoft is broadly over-designating documents, thereby inhibiting The Times’s ability to litigate this case.

Please confirm by July 10 that you will re-designate the documents mentioned above; will re-review the documents that Microsoft has already produced to ensure that the appropriate confidentiality designations have been applied; and will take steps to ensure that, going forward, Microsoft’s confidentiality designations are appropriately applied.

Thank you,

Ellie Dupler

Associate |

1000 Ave. of the Stars, Ste. 1400